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Appeal No. 3726/102
G-2502

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of:

EUGENE S. DUDASH ET AL.

Serial No.: 09/820,147

Filed: March 28, 2001

For: **ATTACHMENT OF HEAD REST GUIDE TUBE
TO VEHICLE SEAT FRAME**

Attorney Docket No.: LEAR 0847 PUS

Group Art Unit: 3726

Examiner: J. Cozart

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APPEAL BRIEF

Box AF

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231

Sir:

This is an appeal from the final rejection of claims 13-18 in the Office Action dated May 20, 2002.

09/17/2002 SZEWDIE1 00000025 023978 09820147

01 FC:120 20.00 CH 300.00 OP **I. REAL PARTY IN INTEREST**

The real party in interest is Lear Corporation, a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 21557 Telegraph Road, Southfield, Michigan 48034, as set forth in the assignments recorded in the U.S. Patent and Trademark Office on June 7, 1996, Reel 8151/Frame 0133, and on August 28, 1996, Reel 8110/Frame 0635.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box AF, Commissioner for Patents, United States Patent and Trademark Office, Washington, D.C. 20231 on:

September 10, 2002
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Mark E. Stuenkel
Name of Person Signing

Mark E. Stuenkel
Signature

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to the present appeal.

III. STATUS OF CLAIMS

This application was filed as a divisional application on March 28, 2001, along with a preliminary amendment. The application as amended by the preliminary amendment included claims 13-21. During prosecution, claims 19-21 were withdrawn from consideration by the Examiner, and claim 13 was amended. Claims 13-18 were finally rejected and are the subject of this appeal. These claims are reproduced in Appendix A.

IV. STATUS OF AMENDMENTS

No amendment after final rejection was filed.

V. SUMMARY OF THE INVENTION

The invention provides a method of attaching a head rest guide tube to a seat back frame that includes a substantially flat section having opposing sides with an aperture formed therethrough. The method includes the following steps: (a) inserting the guide tube into the aperture; and (b) swaging the guide tube over the flat section of the seat back frame, whereby to secure the guide tube within the aperture.

In another expression of the invention, a method of attaching a head rest guide tube to a seat back frame having an aperture extending therethrough includes the following steps: inserting the guide tube into the aperture; and swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame.

In yet another expression of the invention, a method is provided for attaching a head rest guide tube to a seat back frame having a flat portion, wherein the flat portion has an aperture extending therethrough. The method includes the following steps: forming a first radially extending swaged portion on the guide tube; inserting the guide tube into the aperture; and forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, and such that the swaged portions abut the flat portion to thereby secure the guide tube to the seat back frame.

Because the invention involves attaching a head rest guide tube to a seat back frame utilizing a swaging process, the guide tube may be attached to the frame without welding.

VI. ISSUES

1. Claims 13-18 were rejected under § 103(a) as being unpatentable over Applicants' Admitted Prior Art (AAPA) in view of U.S. Patent No. 3,286,539 to Loper et al. The first and only issue is whether the Examiner has made a *prima facie* case that claims 13-18 are unpatentable under § 103(a) over AAPA in view of Loper et al. '539.

VII. GROUPING OF CLAIMS

Claims 13, 14 and 17 are the independent claims involved in the appeal and may be grouped together along with their associated dependent claims.

VIII. ARGUMENT

1. The Examiner Failed To Make A *Prima Facie* Case Under 35 U.S.C. § 103(a)

The Examiner failed to establish proper motivation for combining AAPA with Loper et al. '539. Each of the independent claims involved in the appeal recites a swaging step, or a step of forming a swaged portion, for attaching a head rest guide tube to a seat back frame. In the final Office Action mailed May 20, 2002, the Examiner acknowledged that AAPA does not disclose any of the claimed swaging steps or steps of forming swaged portions, but argued that Loper et al. '539 discloses such steps. (See pages 2-3 of the Office Action). The Examiner further argued that the motivation for combining these references is provided "by the prior art taken as a whole." (See bottom of page 4 through top of page 5 of the Office Action).

Applicants respectfully believe that there is no suggestion or motivation for combining AAPA with Loper et al. '539. As noted by the United States Court of Appeals for the Federal Circuit, there are three possible sources for a motivation to combine references: "the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In Re Rouffet*, 149 F.3d 1350, 47 UPQ2d 1453 (Fed. Cir. 1998). In this case, contrary to the Examiner's assertion, the cited references are directed to different problems. More specifically, AAPA is directed to the problem of attaching a head rest guide tube to a seat back frame, while Loper et al. '539 is directed to securing dished pulley halves together such that the pulley halves are resistant to separation. Furthermore, AAPA discloses welding head rest guide tubes to a seat back frame, and, therefore, teaches away from the process taught by Loper et al. '539. Finally, the Examiner failed to identify or explain any specific understanding or principle within the knowledge of a skilled vehicle seating artisan that would motivate one with no knowledge of the present invention to make the combination. For these reasons, Applicants respectfully believe that one skilled in the vehicle seating art, armed with the knowledge of AAPA, would not be motivated to look to

the non-analogous pulley art, and more specifically to Loper et al. '539, for a solution to the problem of attaching a headrest guide tube to a seat back frame. As a result, Applicants respectfully believe that the Examiner has failed to make a *prima facie* case that claims 13-18 are unpatentable under § 103(a) over AAPA in view of Loper et al. '539, and that the rejection should therefore be reversed.

CONCLUSION

The Examiner's proposed combination of references is improper. Therefore, the final rejection of claims 13-18 should be reversed.

The fee of \$300.00 as applicable under the provisions of 37 C.F.R. § 1.17(c) is enclosed. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978. A duplicate of this notice is enclosed for this purpose.

Respectfully submitted,

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Date: September 10, 2002

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Enclosure - Appendix

IX. APPENDIX A - CLAIMS ON APPEAL

13. A method of attaching a head rest guide tube to a seat back frame having a substantially flat section having opposing sides with an aperture formed therethrough, the method comprising:

- (a) inserting the guide tube into the aperture; and
- (b) swaging the guide tube over the flat section of the seat back frame, whereby to secure the guide tube within the aperture.

14. A method of attaching a head rest guide tube to a seat back frame having an aperture extending therethrough, the method comprising:

inserting the guide tube into the aperture; and
swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame.

15. The method of claim 14 further comprising swaging the guide tube to form an additional swaged portion on the guide tube, wherein the additional swaged portion cooperates with the swaged portion to secure the guide tube to the seat back frame.

16. The method of claim 15 wherein the step of swaging the guide tube to form an additional swaged portion is performed prior to the step of inserting the guide tube into the aperture.

17. A method of attaching a head rest guide tube to a seat back frame having a flat portion, the flat portion having an aperture extending therethrough, the method comprising:

forming a first radially extending swaged portion on the guide tube;
inserting the guide tube into the aperture; and

forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, and such that the swaged portions abut the flat portion to thereby secure the guide tube to the seat back frame.

18. The method of claim 17 wherein the step of forming a first swaged portion is performed prior to the step of inserting the guide tube into the aperture.